IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE G. BIKSHAPATHY

and
THE HON'BLE Mr. JUSTICE P.S.NARAYANA

WRIT PETITION NO : 21773 of 2003

Between:

A.Narasimha Reddy S/O A. Masi Reddy O/o The

Deputy Director of Sericulture, Tirumalagiri, Secunderabad.

..... PETITIONER

AND

1 The APC & Secretary to Government, Agriculture & Co-op.Department, Secretariat, Hyderabad.
2 The Commissioner of Sericulture, Jubilee Hills, Hyderabad.
3 R.Prabhakar, Enquiry Officer/Regional Joint Director of

Sericulture, Chittoor, Chittoor District.
4 I.Venkateshwarlu, The then Commissioner of Sericulture,

Presently working as Managing Director,
State Ware Housing Corporation, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of certiorari to call for the records relating to and connected with the order of the A.P.Administrative Tribunal, Hyderabad passed in O.A.No.1840 of 2003 dated 18/09/2003 and the Proceedings of the 2nd respondent in Rc.No.8320/95-B1-A dated 18/7/02 as confirmed by the first respondent in G.O.Rt.no.21 Agriculture & Co-op(VC.II) Department, dated 10/01/03 and set aside the order of suspension with all consequential benefits

Counsel for the Petitioner: Mr.P.NAVEEN RAO
Counsel for the Respondent No.: GP FOR SERVICES-I

The Court made the following :

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O R D E R: (per GB,J)

The Writ Petition is filed assailing the Order, dated 18.09.2003, passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.1840 of 2003.

2. The petitioner is the applicant before the Tribunal. He challenged the proceedings, dated 18.7.2002, of penalty of compulsory retirement imposed by the Commissioner of Sericulture, 2nd respondent herein, and G.O.Rt.No.21 Agriculture and Co-operation (VC.II) Department, dated 10.1.2003, as confirmed by the Government in appeal.

3. While the petitioner was working as Inspector of Sericulture, he was issued with charge Memo dated 9.5.1996 containing 12 charges. Even prior to the framing of charges, he was placed under suspension on 23.2.1996. However, Government issued G.O.Rt.No.140 A&C dated 18.12.1997 revoking the suspension order and transferring him to Zone-V. However, we are not concerned with his transfer in this Writ Petition. Consequent to the charge Memo, the petitioner submitted his explanation, and thereafter, an enquiry was conducted and the Enquiry Officer submitted his report on 9.12.1999 holding that the charges against the petitioner were proved. After considering the Enquiry Officer's report and also the representation of the petitioner, the Disciplinary Authority passed an order, dated 21.4.2002, directing the Assistant

Director of Sericulture, Hyderabad, to recover a sum of Rs.13,091-82 ps, from the petitioner. Aggrieved by the said Order of recovery, he filed appeal before the Government on 6.6.2002 and the said appeal was pending before the Government. While so, the 2nd respondent passed another order, dated 18.7.2002, imposing the penalty of compulsory retirement from service on the ground that the charges against the petitioner were amply proved.

4. Challenging the said order of penalty of compulsory retirement from service, the petitioner filed an appeal before the Government and the Government passed an order in appeal vide G.O.Rt.No.21, dated 10.1.2003, confirming the order passed by the Disciplinary Authority. The said order came to be challenged before the Tribunal. The learned Tribunal after going through the material available on record came to the conclusion that there were no grounds to interfere with the punishment passed by the Disciplinary Authority and accordingly, dismissed the O.A.No.1840 of 2003 by an order dated 18.9.2003. Against which the present Writ Petition has been filed.

5. The learned counsel for the petitioner submits that the order of the 2nd respondent is wholly illegal and arbitrary inasmuch as, which was passed by the 2nd respondent who was biased and ill-disposed towards the petitioner for having made complaints against him to the Government. He further submits that when the order of recovery was passed on 21.4.2002 and the same was appealed before the Government and during the pendency of the appeal, the order of compulsory retirement was passed. Therefore, it snacks of malice on the part of the Disciplinary Authority and he ought not to have passed such an order more especially when the appeal was pending and in the appeal the petitioner raised the plea including demand of bribe by the Disciplinary Authority, namely the Commissioner of Sericulture. The learned counsel also further submits that even assuming, if the charges are proved, yet to punish is shockingly disproportionate and lesser punishment would have met the ends of justice. He submits that the petitioner has been maintaining good records, and except this incident there was no other punishments against the petitioner for the last 20 years of his service and therefore, it is a case for reduction of

punishment, even the charges are held to be proved.

6 . On the other hand, the learned counsel appearing for the Department submits that the petitioner himself conducted the enquiry on his behalf in an irresponsible manner and he used intemperate language against the superiors and he did not care any superior officer and he has been making allegations against all the officers. Thus, the conduct of the petitioner-officer is such that he cannot be kept in the Department, in the interest of all discipline in the Department itself, and therefore, taking into consideration, the conduct of the petitioner-officer coupled with the findings of the Enquiry Officer to the effect that the charges were held proved, the order of compulsory retirement cannot be said either illegal or arbitrary nor it can be said that the punishment is unconscionable in the facts and circumstances of the case. Therefore, the learned counsel would submit that the order is quite valid and legal, as the Government in G.O.Rt.No.21, dated 10.01.2003, confirmed it.

7. The issue that arises for consideration is whether the order passed by the Government confirming the punishment of the 2nd respondent is sustainable.

8. The facts narrated are that a charge memo was issued to the petitioner on 9.5.1996. Ultimately the Enquiry Officer held that the charges are proved which lead to the recovery of loss caused to the Government and also the penalty of compulsory retirement of the petitioner.

9. Before this Court, the learned counsel appearing for the petitioner, however, clearly submits that he is not challenging the validity of the report of the Enquiry Officer as they were held proved. But however, he submits that punishment is shockingly disproportionate the gravity of the conduct of the petitioner and the Government has not taken into consideration the fact that the punishment order was passed by the officer against whom the serious allegations were leveled by the petitioner and therefore, the Government ought to have considered this matter in proper perspective. He also submits that the

procedure under Rule-37 of Classification, Control and Appeal Rules (for short 'the C.C.A.Rules') were not followed by the Government. Hence, the order is not sustainable in law. Rule 37 provides the method and manner of consideration of the appeal by the Appellate Authority, which reads thus:

> "**Rule 37**: Consideration of appeal:- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 8 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
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> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 9 or Rule 10 or enhancing any penalty imposed under the rules, the appellate authority shall consider:-
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> a. whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in failure of justice;
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> b. whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> c. whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders;
>
> i. confirming, enhancing, reducing or setting aside the penalty; or
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> ii. remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.
>
> Provided that:-
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> i. the Commission shall be consulted in all cases where such consultation is necessary;
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> ii. if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in [clauses (vi) to (x)] of Rule 9 and an inquiry under Rule 20 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 25, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 20 and, thereafter, on consideration of the proceedings of such inquiry, make such orders as it may deem fit. (Subs. By G.O.Ms.205, G.A.D, Dt. 5.6.1998)

iii. if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in *[clauses (vi) to (x)] of Rule 9 and an inquiry under Rule 20 has already been held in thecase, the appellate authority shall make such orders as it may deem fit, **(after the appellant has been given a reasonable opportunity of making a representation);

[Subs: by G.O.Ms.205, G.A.D., Dt. 5.6.1998] *[Added by G.O.Ms.No.480, G.A.D., Dt. 20.12.2001]

iv. subject to the provisions of Rule 25, the appellate authority shall:-

a. Where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 9 and falls within the scope of the provisions contained in sub-rule (2) of Rule 22; and

b. Where an inquiry in the manner laid down in Rule 20 has not already been held in the case;

Itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 20 and thereafter on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

v. no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 22, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 33 the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

10. Therefore, under the law it is open to the Government either to consider the punishment as adequate or inadequate or severe, and it is always open to the Government to confirm the penalty if it is adequate, to reduce the penalty, if it is severe, and as such, following the Rules and Procedure. But as we read from the Order of the government, it has only concentrated on the charges and the findings of the Enquiry Officer with reference to the material available on record and it is also not in dispute that the charges are framed against the

Officer, proved in the enquiry and not being assailed before this Court for the obvious reasons, but only the issue that arises for consideration is whether the Government has considered the severity of the punishment while dealing with the matter. As we see from the records, the Government did not go into this aspect at all, and holding that the charges are proved and did not concentrate the punishment. But in this case, we have to take into consideration, yet another aspect that when the appeal was filed by the petitioner against the order of recovery passed by the Department, he had made certain allegations against the Disciplinary Authority. We do not intend to extract the exact wording. Obviously, it cannot be said that the disciplinary authority was not having knowledge of those allegations while he was passing the order of compulsory retirement. Therefore, in such circumstances, Government ought to have considered the matter independently, with reference to the material available on record. In normal circumstances the 2nd respondent ought not to have passed the order of punishment in the wake of allegations leveled against him. It may be the allegations may be baseless. But when such serious allegations are made against him, he ought to have reported the matter to the Government to delegate the power to some other officer to pass appropriate orders. Be that as it may, the Government also ought to have considered the matter in the wake of the above material, more especially when the petitioner has leveled certain unpleasant remarks against the 2nd respondent – commissioner.

11. Under those circumstances, we find that the order passed by the Government without concentrating on the gravity of the charges vis-à-vis the punishment being one of the requirements under the statute. We find that the Government ought to have taken in to consideration the gravity of misconduct alleged against the petitioner. In the wake of this, there is no other alternative left to the Government except for fresh consideration of the proportionating the punishment vis-à-vis gravity of the misconduct and to award proper punishment. But this Court can also exercise this power in exceptional cases and can substitute the punishment also. Keeping in view the situation as available before this Court, the order of compulsory retirement was passed on 19.7.2002 and the same was confirmed by the Government on 10.1.2003. It is

also on record that the service record of the petitioner was perused by the Government and it is stated that the service record is clean and no punishment imposed on either similar type of misconduct or any other misconduct. It is presumed that the service record is clean and it is the first and last punishment, which was imposed for the charges framed against the petitioner. Basically, it appears that the Government and the Disciplinary Authority were not satisfied the way in which the petitioner has conducted himself either in enquiry or representations made to the Government from time to time. It is true that he has used intemperate language and appears to have conducted the enquiry in a manner, which would tell upon his conduct, but at the same time, since this is the first misconduct which resulted in a fatal punishment, we find that the punishment ought to be reformative rather than punitive. Instead of remitting the matter, we find it appropriate to impose punishment by this Court itself, so that the petitioner mends himself in future by behaving himself as a responsible officer without indulging in mudslinging activities on other officers.

12. Under those circumstances, we find that punishment of compulsory retirement is unconscionable and too harsh. Accordingly, it is set aside and we find that punishment of reduction of his pay by five incremental stages would meet the ends of justice. This punishment will have non-cumulative effect. The petitioner shall also give an undertaking before the Government that in future he shall not use any intemperate language and conduct himself without resorting to any complaints against the superior officers. On filing this undertaking, he shall be reinstated into service forthwith and proper posting shall be given to him depending upon the vacancy position. It is however made clear that this Court has interfered with punishment in exceptional circumstances and therefore, any recurrence of such attitude of the Officer, no lenience can be given to him by the Disciplinary Authority in future. The period from the date of retirement till reinstatement shall be treated as ‘leave with pay’ to the extent of leave available and the balance period be treated as ‘leave without pay’.

13. The Writ Petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

(G. BIKSHAPATHY, J)

(P.S. NARAYANA, J)

9th March 2005.

Note:-

Issue C.C. in one week.

B/o

BCS

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The APC & Secretary to Government, Secretariat, Hyderabad.
2. The commissioner of sericulture, Hyderabad.
3. 2 CC copies to the G.P.for Services-I, A.P. High Court Buildings, Hyderabad (OUT)
4. 2 CD copies,
5. 1 CC to MR.NAVEEN RAO, learned counsel for the petitioner.